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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of the Commission's)
Rules to Provide Channel Exclusivity)
to Qualified Private Paging Systems)
at 929-930 MHz)

PR Docket No. 93-35

To: The Commission

REPLY COMMENTS OF MAP MOBILE COMMUNICATIONS, INC.

MAP Mobile Communications, Inc. ("MAP"), hereby replies to the comments filed on the petitions seeking reconsideration or clarification of the Commission's Report and Order in the above-referenced proceeding.¹

A. To Avoid Potential Conflict and Litigation, the FCC Should Clarify the Types of Modifications that May Be Made to Grandfathered Facilities

In its Petition in this matter, MAP asked the agency to clarify certain ambiguities in the rules that may undermine the FCC's goals to promote the development and investment in efficient paging systems.² Among other things, MAP noted that the rules do not adequately specify the types of modifications that may be made to grandfathered facilities,

¹ Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, 8 FCC Rcd 8318 (1993) ("Report and Order").

² Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, PR Docket No. 93-35, "Petition For Clarification or Reconsideration," filed December 27, 1993, by MAP Mobile Communications, Inc. ("MAP Petition").

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and it asked the FCC to clarify the rights of licensees to modify facilities so that they are able to maintain viable offerings.

American Paging opposes MAP's request. It argues that to "expand the types of modifications which grandfathered licensees can make . . . [could] diminish or impair the development potential of a co-channel system which has already qualified for exclusivity in the same area."³

Contrary to American Paging's assertion, MAP is not asking to expand the rights of grandfathered licensees. It seeks only clarification of the types of "minor" modifications that the FCC will allow.⁴ Grandfathered licensees require the ability to maintain adequate service to their subscribers. The rules should not be interpreted to hamper the ability of existing licensees to respond to customer requirements that may not have matched the reality of business conditions when the facilities were authorized initially, or to improve the technical aspects of their services, or to adjust to business changes. Indeed, the

³ Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, PR Docket No. 93-35, "Comments of American Paging, Inc.," filed March 9, 1994, at 4 ("American Paging Petition").

⁴ Specifically, MAP asked the agency to specify that grandfathered licensees may change (1) the number of paging receivers; (2) the type of emission; (3) the antenna height; (4) the power from that authorized; (5) the class of station; (6) the ownership, control or corporate structure; and (7) the location of existing facilities.

Commission noted that it is appropriate to accommodate licensees who are already operating systems and have made investments.⁵ Any other approach would be anti-competitive.

American Paging's opposition underscores the need to issue such clarification. The changes MAP proposed to the rules were consistent with the responsibilities of licensees to cooperate in sharing PCP channels that include grandfathered stations. Nor did MAP suggest the adoption of any "major" modifications that would have adversely affected a co-channel licensee's operations. For example, MAP did not ask the agency to permit the construction of additional transmitters. MAP's recommendations were modest and intended strictly to ensure that grandfathered licensees can provide adequate service.

American Paging's opposition is therefore surprising and, more importantly, signals a potential problem in this area. If the agency does not clarify the rules as requested, MAP anticipates that licensees may become embroiled in litigious proceedings at the agency to determine the rights of individual licensees at individual sites. A decision in this rulemaking to clarify these rights is much more preferable and less burdensome than resolving such matters in numerous collateral proceedings.

⁵ Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, 8 FCC Rcd 2227, 2232 (1993).

**B. Extended Implementation Schedules Should
Be Available to Existing Licensees**

Several companies seek reconsideration of the Commission's rules restricting the use of multi-frequency transmitters.⁶ They argue, among other things, that the Commission's decision to restrict such use may defeat the very purpose of the agency's goals in this proceeding. Alternatively, they ask the agency to grant waivers of its new rule.

MAP supports the FCC's efforts to safeguard against warehousing and speculation. The agency's new rule will significantly prevent such abuse. Nevertheless, the rule also restricts the flexibility of legitimate operators to offer innovative and competitive services to subscribers with economical and efficient facilities. MAP therefore concurs with those parties that request reconsideration of the agency's rule so that companies may be offered an appropriate period to transition from multi-frequency to single-frequency transmitters.

⁶ See, e.g., Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, "Petition for Reconsideration and Clarification of the Association for Private Carrier Paging Section of the National Association of Business and Education Radio, Inc.," filed December 27, 1993; "Petition for Reconsideration and Classification of First National Paging Company, Inc.," filed December 27, 1993; see also "Comments on Petitions for Reconsideration," filed March 9, 1994, by Arch Communications Group, Inc.; "Celpage, Inc. Comments in Support of Petitions for Partial Reconsideration or Clarification," filed March 9, 1994.

**C. The Agency Should Clarify the One Year
Re-Application Restriction**

MAP concurs with PageNet⁷ that the FCC should clarify Section 90.495(c)(2), which prohibits licensees who fail to construct a qualified system from re-applying for "any new station authorization in the previously proposed service area for one year from the expiration of exclusivity."⁸ This restriction should not be interpreted to prevent operators from applying for facilities on a different frequency for which they hold other authorizations inside the service area of the unbuilt facility or on any frequency outside the service area of the unbuilt facility. While it may be appropriate to sanction a licensee that has failed to construct certain facilities, the sanction should not be applied to hinder that licensee's ability to offer and improve service on other systems for which they hold authorizations.

⁷ Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, "Petition for Clarification and Reconsideration of Paging Network, Inc." filed December 27, 1993.

⁸ Report and Order, at Appendix A, Section 90.495 (c)(2).

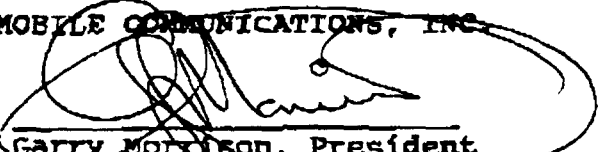
D. Conclusion

For the reasons discussed in its Petition and in this Reply, MAP urges the Commission to clarify its rules to accommodate existing licensees that are currently operating extensive paging systems.

Respectfully submitted,

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March 21, 1994

CERTIFICATE OF SERVICE

I, Kim R. Riddick, hereby certify that on this 21st day of March, 1994, I caused copies of the foregoing "Reply Comments of MAP Mobile Communications, Inc.," to be mailed via first-class postage prepaid mail to the following:

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